APPENDIX.

ARTICLE 11, HOUSE BILL NO. ~~289~~ 589

AN ACT levying an Excise Tax upon the privilege of using, within the State of Oklahoma, articles of tangible personal property purchased subsequent to the date of passage and approval of this Act; providing for certain exemptions; providing for the disposition of the revenue arising hereunder; providing for the collection of the tax levied hereby and the enforcement of this Act by the Oklahoma Tax Commission; providing penalties for the violation of this act; authorizing the promulgation of rules and regulations for the proper administration of this Act by the Oklahoma Tax Commission; providing for refunds; making such taxes and penalties a lien on the taxpayer's property; providing legal remedy for aggrieved taxpayers; defining certain words; providing the provisions of this Act are severable; and declaring an emergency.

"SECTION 1. USE TAX ACT.

"This Act shall be known and cited as the 'Use Tax Act, 1937.'

"SECTION 2. APPORTIONMENT OF FUNDS.

"It is hereby declared to be the purpose of this Act to provide revenues for the support of the functions of the State Government of Oklahoma; and for this purpose and to this end, it is hereby expressly provided that the revenues derived hereunder are hereby apportioned as follows:

"*(a)* Ninety-seven (97%) per centum of such moneys shall be paid into the General Revenue Fund of the State, subject to appropriation by the Legislature for the support of the functions of the State Government.

"*(b)* The remaining three (3%) per centum of such moneys collected under the provisions of this Act shall be paid to the State Treasurer and placed to the credit of the Oklahoma Tax Commission Fund, to be paid out of said fund in payment of expenses necessarily incurred by said Commission in the performance of its lawful duties, and

said funds, or so much thereof as may be necessary, is hereby apportioned for such purposes; *provided,* that any unexpended balance remaining in said fund at the end of any fiscal year shall revert to the General Revenue Fund of the State of Oklahoma.

"SECTION 3. DEFINITIONS.

"The following words, terms, and phrases, when used in this Act, shall have the meanings ascribed to them in this Section, except where the words clearly indicate a different meaning:

"*(a)* The term 'person' shall include any individual, company, partnership, joint venture, joint agreement, association (mutual or otherwise), corporation, estate, trust, business trust, receiver, or trustee appointed by the State or Federal Court or otherwise, syndicate, this State, any county, city, municipality or any other political subdivision of the State, or group or combination acting as a unit in the plural or singular number.

"*(b)* The term 'Commission' shall mean the Oklahoma Tax Commission.

"*(c)* The term 'purchase price' shall mean the consideration paid or given or contracted to be paid or given, by any person to the seller of an article of tangible personal property for the article purchased. The term shall include, in addition to the consideration paid or given or contracted to be paid or given, the actual cost of transportation from the place where the article was purchased to the person using the same in this State. The term 'purchase price' shall also mean the consideration paid or given, or contracted to be paid or given, by the transferee to the transferor, for articles of tangible personal property.

"*(d)* The term 'taxpayer' shall mean any person liable to pay a tax hereunder, or to make a report for the purpose of claiming any exemptions in payment of any tax levied by this Act.

"*(e)* 'Purchase at retail' shall mean and include all purchases except purchases made for the purpose of resale.

"*(f)* The term 'sale' is hereby declared to mean the transfer of either the title or possession for a valuable consideration of tangible personal property regardless of the manner, method, instrumentality or device by which such transfer is accomplished. The term 'sale' is also declared to include the exchange, barter, lease or rental of tangible personal property where such exchange, barter, lease or rental results in either the transfer of the title or the possession.

"*(g)* The term 'purchase' is hereby declared to mean any method whereby a transferee receives from a transferor either the title or possession, for a valuable consideration, of tangible personal property regardless of the manner, method, instrumentality or device by which such transfer is accomplished. The term 'purchaser' is also declared to include the exchange, barter, lease or rental of tangible personal property where such exchange, barter, lease or rental results in either the transfer of the title or the possession to the transferee.

"SECTION 4. TAX LEVIED.

"There is hereby levied and there shall be collected from every person using, within this State, any article of tangible personal property purchased, leased, rented or exchanged subsequent to the date of passage and approval of this Act, an excise tax for the privilege of so using such tangible personal property. Such tax shall be and is hereby levied and shall be collected in an amount equal to two (2%) per centum of the purchase price (as defined in Section 3 of this Act) of such tangible personal property.

"SECTION 5. EXEMPTIONS.

"The provisions of this Act shall not apply:

"*(a)* In respect to the use of any article of tangible personal property brought into the State of Oklahoma by a

nonresident individual, visiting in this State, for his or her personal use or enjoyment, while within the State.

"*(b)* In respect to the use of tangible personal property purchased other than at retail.

"*(c)* In respect to the use of any article of tangible personal property, the sale or use of which has already been subjected to a tax equal to or in excess of that imposed by this Act, whether under the laws of this State, or some other State of the United States.

"*(d)* In respect to the use of tangible personal property purchased during any calendar month, the total cumulative purchase price of which is less than One Hundred ($100.00) Dollars.

"*(e)* In respect to the use of tangible personal property now specifically exempted from taxation under the law of Oklahoma assessing a sales' or consumers' tax upon the sale of tangible personal property.

"*(f)* In respect to the use of any article of tangible personal property brought into the State by an individual with intent to become a resident of this State where such personal property is for such individual's personal use or enjoyment.

"SECTION 6. PROPORTIONAL TAX.

"If any article of tangible personal property has already been subjected to a tax, by this or any other State, in respect to its sale or use, in an amount less than the tax imposed by this Act, the provisions of this Act shall apply to it by a rate measured by the difference only between the rate herein fixed and the rate by which the previous tax upon the sale or use was computed.

"SECTION 7. TAX COMMISSION TO COLLECT.

"The tax hereby levied shall be collected by the Commission.

"SECTION 8. RETURNS.

"Each taxpayer subject to the provisions of this Act shall, on or before the 15th day of every calendar month, file a return with the Commission, on blanks furnished by the Commission, showing in detail the total purchase price of tangible personal property used by him within the State during the preceding calendar month subject to the tax hereinimposed and such other information as the Commission may deem pertinent. Each taxpayer shall remit to the Commission, with each such return, the amount of tax shown thereon to be due. Such return shall be made under oath.

"SECTION 9. PENALTY.

"If the amount of tax imposed by this Act is not paid on or before the date prescribed for its payment, there shall be collected, as a part of the tax, a penalty upon said unpaid amount at the rate of one (1%) per centum per month from the date prescribed for its payment until it is paid. In addition to the above prescribed penalty, there shall be collected an additional penalty of ten (10%) per centum on the tax due when such tax is not paid within a period of thirty (30) days after the final date prescribed for its payment.

"SECTION 10. SAME.

"If any person required to make and file a return by any provision of this Act, fails to file such return within the time required, or files any return which is false or fraudulent in that it contains statements which differ from the quantity or true purchase price of the tangible personal property upon which the use tax herein designated is levied for the taxable period for which said return is made, the Commission shall given ten (10) days' notice, in writing, to such taxpayer to appear before it with such books, records and papers as it may require relating to the business of such taxpayer to give testimony or to answer interrogatories, under oath, administered by the Chairman, or any member of the Oklahoma Tax Commission, respecting the quantity

or purchase price of the tangible personal property, upon the use of which the tax is levied by this Act. If any taxpayer shall fail or refuse to make any such return, or to permit an examination of the books, records or papers of such taxpayer, or shall refuse to appear and answer any question within the scope of such investigation, the Commission may apply to the District Court of the county in which such taxpayer, his agents or employees may be found, or to any judge thereof for an order requiring such taxpayer to make such returns, or requiring the taxpayer, his agents or employees, to appear and answer any such questions or to permit such examination upon the filing of such application, the court or any judge thereof, shall issue an order, upon such reasonable notice as shall be prescribed therein, to be served upon the said taxpayer or agent in charge of his business, directing him to appear for testimony and to produce such records, books and papers as may be required.

"SECTION 11. SAME.

"*(a)* Any person subject to the provisions of this Act failing or refusing to furnish any return herein required to be made, or failing or refusing to furnish a supplemental return, or other data required by the Commission, or who shall violate any other provision of this Act, punishment for which is not otherwise herein provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than Twenty-five ($25.00) Dollars, nor more than Two Hundred ($200.00) Dollars, for each such offense.

"*(b)* Any person required to make, file, render, sign or verify any return as aforesaid, who makes any false or fraudulent return with intent to evade the tax hereby levied, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not less than One Hundred ($100.00) Dollars, nor more than One Thousand ($1,000.00) Dollars, or imprisonment in the county jail

not exceeding one (1) year, or by both such fine and imprisonment.

"The venue of prosecutions arising under the Subsection (a) of this Section shall be either in the county in which the taxpayer resides or wherein such tangible personal property is used; and prosecution arising under the Subsection (b) of this Section shall be maintained in the county where such return was verified or sworn to or where the taxpayer resides.

"SECTION 12. ACTIONS TO COLLECT TAX.

"Independently of all other remedies and proceedings authorized by this Act, for the enforcement of the collection and payment of the tax hereby levied, a right of action by suit, in the name of the State of Oklahoma, on relation of the Oklahoma Tax Commission, is hereby created against the taxpayer, and such suit shall be maintained and prosecuted and all proceedings taken to the same effect and extent as for the enforcement of a right of action for debts; and all provisional remedies available in such action shall be and are hereby made available to the State of Oklahoma in the enforcement of the payment of any tax accruing hereunder.

"SECTION 13. OATHS.

"The Oklahoma Tax Commissioner, or any deputy, agent or employee whom he may designate, shall have the power to administer an oath to any person in respect to any return or report required by this Act, or, by the rules and regulations of the Commission.

"SECTION 14. TAX WARRANTS.

"If any tax imposed by this Act, or any portion of such tax, be not remitted when due, the Commission may issue a warrant under its official seal, directed to the Sheriff of any county of this State, commanding him to levy upon and sell any real or personal property of the taxpayer found within

his county, for the payment of the amount thereof, with the added penalties, interest and costs of executing the warrant and to return such warrant to the Commission and to pay the money collected by virtue thereof by the time to be therein specified, not more than sixty (60) days from the date of the warrant. The Sheriff shall, within ten (10) days after the receipt of the warrant, file with the Court Clerk of the county, a copy thereof and thereupon the Court Clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and, in the proper columns, the amount of the tax or portion thereof, and interest and penalties for which the warrant is issued, and the date when such copy is filed, and thereupon the amount of such warrant and interest and penalties so docketed shall become a lien upon the title to, and interest in, any real property, of the taxpayer against whom such warrant is issued, in the same manner as a judgment duly docketed in the office of such Court Clerk; and such lien shall be preferred and superior to all mortgages or other liens filed or recorded subsequent to the date such tax lien becomes a matter of record. Such Sheriff, or the person to whom such warrant is directed, shall thereupon proceed in all respects in like effect and in the same manner prescribed by law in respect to executions issued against property upon a judgment of a court of record, and shall be entitled to the same fees for his service in executing the warrant to be collected in the same manner. In cases of failure of any Sheriff to file said copy of the warrant with the Court Clerk as herein prescribed, a certified copy thereof filed by the Commission shall operate with the same effect as if same had been filed by the Sheriff.

"SECTION 15. ACTION BY TAXPAYERS.

"A right of action is hereby created, to afford a remedy at law, for any taxpayer aggrieved by the provisions of this Act; and in case of any such taxpayer resisting the collection of any tax hereby levied, or the enforcement of any

provisions of laws in relation thereto, such taxpayer shall remit the tax and give the Commission notice, at the time, of his intention to file suit for the recovery of same; and upon receipt of such notice, the amount of the tax so remitted shall be segregated and held by the Commission in its depository account with the State Treasury, for a period of thirty (30) days, and if suit be filed within such time for the recovery of such tax, such funds so segregated shall be further held, pending the outcome of such suit. If the taxpayer prevails, the said Commission shall refund the amount of such tax to claimant, plus legal interest thereon at the rate of three (3%) per centum per annum from the date of such payment to the date fixed in the judgment of the Court; which said amount and interest shall be evidenced by the final judgment of the Court having jurisdiction of said suit. Such refund shall be made by cash voucher drawn by the Commission upon its depository account with the State Treasurer.

"This Section shall afford a legal remedy and right of action in any State or Federal Court having jurisdiction of the parties and subject-matter, having full and complete authority to adjudicate any and all cases arising upon the enforcement of this Act as to the legality of any tax accrued, or accruing, or the methods of enforcement thereof. In all such actions, the service of process upon the Oklahoma Tax Commissioner, or in his absence, a deputy Commissioner, shall be sufficient service and the Oklahoma Tax Commission shall be the sole, necessary or proper party defendant in any such suit.

"SECTION 16. RULES AND REGULATIONS.

"It shall be the duty of the Commission to adopt and promulgate and enforce such rules and regulations as will provide methods, devices or plans for the payment and collection of the taxes levied hereunder. The Commission shall design, prepare, print and furnish to all taxpayers, or make available to them, all necessary forms for filing returns and

instruments required for a full collection from taxpayers and accounting for the taxes imposed by this Act.

"SECTION 17. REFUND.

"If any taxpayer, pursuant to the terms of this Act, shall, by reason of clerical error or miscalculation, pay a larger tax for any given period than is due, such taxpayer shall be entitled to a refund of such excess so paid. Such refund, upon approval of claim therefor by the Commission, shall be paid out of the Oklahoma Tax Commission fund, or, if the taxpayer elects so to do, he may receive credit for the amount of such excess tax or taxes subsequently becoming due by the taxpayer under the provisions of this Act; *provided,* no refund shall be made on account of such excess payment unless a claim therefor is filed with the Oklahoma Tax Commission by the taxpayer within one (1) year from the day such excess payment was made.

"SECTION 18. CONSTRUCTION OF ACT.

"If any section, subsection, sentence, clause or phrase of this Act is held to be invalid, the decision shall not affect the validity of the meaning of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

"Approved May 5, 1937. Emergency."